

IN THE UNITED STATES DISTRICT COURT
OR THE NORTHERN DISTRICT OF CALIFORNIA

SP AVIATION, INC.,) Case No. C05-04041 SC
Plaintiff,)
vs.) STIPULATION FOR ENTRY OF
PIEDMONT HAWTHORNE AVIATION) PROTECTIVE ORDER AND ORDER
LLC,) THEREON
Defendant.)

WHEREAS the parties hereto wish to expedite the exchange of documents relevant to this lawsuit; and

WHEREAS some of the documents which the parties are required to exchange contain confidential, proprietary or trade secret information of that party; and

WHEREAS the parties have agreed to the entry of a Protective Order to safeguard this information:

IT IS HEREBY STIPULATED by and between counsel for Plaintiff SP Aviation, Inc. and Defendant Piedmont Hawthorne Aviation, LLC, and the parties respectfully request that the Court enter an order in the form of Exhibit A, attached hereto.

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1 Dated: April 4, 2006

LEONIDOU & ROSIN
Professional Corporation

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8 By James R. Busselle
9 James R. Busselle
10 Attorney for Plaintiff
11 SP AVIATION, INC.
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Dated: April 1, 2006

DOMBROFF & GILMORE

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10 By Dane B. Jaques
11 Dane B. Jaques
12 Attorney for Defendant
13 RIEDMONT HAWTHORNE AVIATION
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IT IS SO ORDERED:

Dated: April 11, 2006



PROTECTIVE ORDER

1 2. **Application.** This Protective Order (“Order”) shall apply to all litigation material
2 designated as “Confidential” or “Highly Confidential” by the party producing or presenting it
3 during the course of this action, unless and until the Court determines that such litigation
4 material shall not be so treated in accordance with the provisions of this Order. “Confidential”
5 or “Highly Confidential” litigation material may be contained in information disclosed
6 informally or formally during discovery, hearing or trial and may also be contained in any
7 pleading, declaration, affidavit, brief, motion, transcript or other writing. Litigation material
8 designated as “Confidential” or “Highly Confidential” shall be used solely for the purpose of
9 preparing for and conducting this litigation, and shall not be disclosed in any manner, or used for
10 any other purpose, without further order of the Court. However:

11 a. Nothing herein shall prevent a party from disclosing or using any
12 information or documents which the party designated itself and which are confidential only to
13 that party itself;

14 b. Acceptance of information designated pursuant to this Order shall not
15 constitute an admission or acknowledgment that the material so designated is in fact proprietary,
16 confidential or a trade secret; and

17 c. Nothing herein shall bar counsel from rendering advice to its client with
18 respect to this action, provided that counsel does not disclose such information in a manner not
19 specifically authorized below.

20 2. **Definitions:** The following definitions apply for the purposes of this Order:

21 a. “Producing Party” is the party on whose behalf litigation material is
22 designated “Confidential” or “Highly Confidential.”

23 b. “Counsel” is the counsel of record of any party who has appeared in the
24 action.

25 c. “Confidential” litigation material is any litigation material, or portions
26 thereof, which constitutes a party’s trade secret information, or confidential research
27 development, marketing, business, investment, financial or other similar non-public information.

1 d. "Highly Confidential" litigation material is any litigation material, or
2 portions thereof, which constitutes a party's trade secret information, within the meaning of
3 California Civil Code Section 3426.1 and would be of economic benefit to a party's competitor,
4 or protectible "private" information under California's right to privacy.

5 e. The designation "Confidential" or "Highly Confidential" shall not apply to
6 any information or any document that is publicly available or that the non-Producing Party has
7 acquired through lawful means.

8 3. **Access regarding "Confidential" Material:** Litigation material designated
9 "Confidential," any copies thereof, and the information contained therein shall not be given,
10 shown, made available or communicated in any way to anyone except:

11 a. The Court (including Clerks and other Court personnel);
12 b. Parties who have made a general appearance in this action and their
13 Counsel, including the legal associates and clerical or other support staff who are employed by
14 such Counsel and are working under the express direction of such counsel;

15 c. Consultants and experts retained in connection with the action who
16 comply with the provisions of Paragraph 6 below;

17 d. Court reporters who record deposition or other testimony in the litigation;
18 e. Any person who is indicated on the face of a document to have been an
19 author, addressee or copy recipient thereof; and
20 f. Any other person to whom the parties agree in writing.

21 4. **Access regarding "Highly Confidential" Material:** Litigation material
22 designated "Highly Confidential," any copies thereof, and the information contained therein shall
23 not be given, shown, made available or communicated in any way to anyone except:

24 a. The Court (including Clerks and other Court personnel);
25 b. Outside Counsel to the parties, including the legal associates and clerical
26 or other support staff who are employed by such Counsel and are working under the express
27 direction of such counsel;

28 c. Consultants and experts retained in connection with the action who

1 comply with the provisions of Paragraph 6 below;

2 d. Court reporters who record deposition or other testimony in the litigation;
3 and

4 e. Any person who is indicated on the face of a document to have been an
5 author, addressee or copy recipient thereof; and

6 f. Any other person to whom the parties agree in writing.

7 5. **Non-Expert Recipients:** Counsel shall apprise any person who is not an expert,
8 but who is otherwise permitted to view “Confidential” or “Highly Confidential” litigation
9 material, that he or she is bound by the terms this Order. Such person shall also execute the form
10 attached hereto as Exhibit A. Counsel shall retain such written form until the conclusion of the
11 action and shall provide such form(s) to opposing Counsel upon request.

12 6. **Expert Recipients:** Before any consultant or expert, retained by or on behalf of a
13 party for the purposes of this Action, is given access to litigation material designated
14 “Confidential” or “Highly Confidential,” the identity of that consultant or expert shall be
15 disclosed to the Producing Party, along with a curriculum vitae or similar documents indicating
16 the consultant or expert’s work experience that is relevant to the subject matter of the action.
17 Counsel who has retained the consultant or expert shall also respond to the Producing Party’s
18 reasonable requests for additional information about the consultant or expert. The Producing
19 Party shall have ten calendar days from the date of notice within which to object to the
20 consultant or expert. The grounds for such an objection shall either be a conflict of interest on
21 the part of the consultant or expert or a substantial risk that the consultant or expert will
22 inadvertently or inadvertently use or disclose the “Confidential” or “Highly Confidential”
23 information. Any dispute over the merits of the objection will be resolved by the Court. The
24 objecting party will bear the burden of justifying the objection. Until such time as the objection
25 is withdrawn or overruled, no “Confidential” or “Highly Confidential” material shall be
26 disclosed to the consultant or expert. If no objection is made, or the objection is withdrawn or
27 overruled, counsel retaining the consultant or expert shall provide him or her with a copy of this
28 Order. The consultant or expert shall also execute the form attached hereto as Exhibit A.

1 Counsel shall retain such written statement until the conclusion of the litigation and shall provide
2 it to opposing counsel upon request.

3 **7. Requirement of Good Faith:** The Producing Party may not designate
4 information or any document as either "Confidential" or "Highly Confidential" unless that Party
5 has a reasonably basis for believing that, in fact, that information is "Confidential" or "Highly
6 Confidential" as defined in this Order.

7 **8. Documentary Discovery:** A Producing Party or its Counsel may designate as
8 "Confidential" or "Highly Confidential" any documents or other tangible litigation material,
9 including interrogatory answers, by marking every such page "Confidential" or "Highly
10 Confidential" as appropriate.

11 **9. Depositions:** A Producing Party or its Counsel may designate depositions or
12 other testimony as "Confidential" or "Highly Confidential" by any one of the following means:

13 a. Stating orally on the record, with reasonable precision as to the affected
14 testimony, on the day the testimony is given that this information is "Confidential" or "Highly
15 Confidential"; or

16 b. Sending to counsel for all other parties written notice designating, by page
17 and line, the portions of the transcript of the deposition or other testimony to be treated as
18 "Confidential" or "Highly Confidential" within five business days after receipt of the transcripts,
19 during which period said deposition or testimony shall be treated as "Highly Confidential."

20 The Producing Party may exclude from a deposition any person who is not qualified for access to
21 the "Confidential" or "Highly Confidential" information. Any transcript or portion thereof
22 designated "Confidential" or "Highly Confidential" shall be bound separately and marked
23 "Confidential" or "Highly Confidential," respectively, and may only be disclosed in the manner
24 set forth, and to the persons designated, in this Order.

25 **10. Third-Party Discovery:** If any non-party, having received a subpoena or
26 compulsory process, wishes to utilize the protections set forth in this Order, such third-party may
27 do so by acknowledging in writing that it is bound by the terms of this Order and by submitting
28 to the jurisdiction of this Court for the purpose of enforcing this Order.

1 11. **Inadvertent Production:** The inadvertent production of any document or other
2 disclosure of litigation material which the Producing Party contends is subject to this Order shall
3 not necessarily be deemed a waiver in whole or in part of the claim of protection, either as to the
4 specific document or the information disclosed. Promptly after the discovery of the inadvertent
5 production, the Producing Party shall give notice to the receiving party that documents or
6 information have been inadvertently produced or disclosed and request that such documents or
7 information be designated “Confidential” or “Highly Confidential.” The receiving party shall
8 treat the inadvertently disclosed documents as “Confidential” or “Highly Confidential” as
9 requested until such time as any dispute over a whether occurred has been resolved. Any such
10 dispute shall be resolved under Paragraph 14, below and the Producing Party’s inadvertent
11 disclosure shall be a factor in determining whether any given designation is justified.

12 **12. Maintenance of Material:** The recipient of any “Confidential” or “Highly
13 Confidential” litigation material that is provided pursuant to this Order shall maintain it in a
14 secure and safe area and shall exercise due and proper care with respect to its storage, custody
15 and use.

16 13. **Court Procedures:** If litigation material designated "Confidential" or "Highly
17 Confidential," or quotations from or references to such material, are to be included in papers
18 filed with or otherwise disclosed to the Court, or in argument to the Court, such papers or the
19 transcripts of such argument shall be labeled "Confidential -- Subject to the Confidentiality
20 Protective Order," or "Highly Confidential -- Subject to the Confidentiality Protective Order,"
21 and shall be filed in a sealed envelope (or other appropriate sealed container) which shall be
22 appropriately captioned under the rules of this Court and endorsed with a statement substantially
23 in the following form:

CONTENTS UNDER SEAL

AND SUBJECT TO PROTECTIVE ORDER

26 This envelope contains Confidential or Highly Confidential
27 litigation material subject to the Court's Protective Order and is not
28 to be opened, or the contents thereof displayed or revealed, except

1 by further order of the Court.

2 *SP Aviation v. Piedmont Hawthorne*, Case No. C05-04041 SC

3 Any party may ask the Court to keep such papers under seal. If the Court grants the request,
4 such papers shall not be disclosed to any person without the written consent of the party or
5 person who designated as "Confidential" or "Highly Confidential" the litigation material quoted
6 or referred to.

7 **14. Objection to Designation:** A party may object to any designation under this
8 Order at any time. If any party objects to the designation of any litigation material as
9 "Confidential" or "Highly Confidential," that party shall first state the objection by letter to the
10 Producing Party. The parties agree to confer in good faith by telephone or in person to resolve
11 any dispute respecting the terms or operation of this Order. If the parties are unable to resolve
12 such dispute, any party may then move the Court for an order resolving the dispute. The
13 Producing Party shall bear the burden of justifying the designation. Until the Court rules on such
14 dispute, the litigation material in question shall continue to be treated as "Confidential" or
15 "Highly Confidential," as designated.

16 **15. Modification of Order:** The parties may modify the provisions of this Order at
17 any time by written stipulation, so ordered by the Court. Moreover, by this Order, the parties do
18 not waive any right to object to any discovery request, or to the admission of evidence on any
19 ground, or to seek any further protective order, or to seek relief from the Court from any
20 provision of this Stipulation.

21 **16. Return of Materials:** Within thirty (30) days of the conclusion of this litigation,
22 including any appeal(s) from a final judgment rendered by the Court, all litigation material
23 designated "Confidential" or "Highly Confidential," and all copies or notes thereof, shall be
24 returned to counsel for the party who initially produced the litigation material, except that
25 counsel may retain their work product and copies of court filings, trial or hearing transcripts and
26 exhibits, provided such retained documents will continue to be treated as provided in this Order.
27 In the alternative, counsel may shred or otherwise destroy all litigation material designated
28 "Confidential" or "Highly Confidential," except for the above-noted work product, court filings,

1 etc., and certify to the Producing Party in writing that such litigation material.

2 **17. Cumulative Remedies:** In the event anyone shall violate or threaten to violate
3 any terms of this Order, the parties agree that the Producing Party may immediately apply to
4 obtain injunctive relief against such other person or entity. Any and all other remedies available
5 to the Producing Party, including an order to show cause re contempt, are cumulative, and the
6 application for one does not preclude the later application for any other.

7 **18. Survival:** This Order is intended to regulate the handling of "Confidential" and
8 "Highly Confidential" information and documents during the pre-trial period of this action.
9 After the conclusion of the action, the obligations and duties arising under this Order shall
10 remain in effect and shall survive and continue to be binding until further order of the Court.
11 This Court shall retain jurisdiction over the parties and any other person who accepts being
12 bound by the Order for the purpose of enforcing its terms.

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